

JUL 16 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL SALAZAR-CRUZ, a/k/a JOSE
MANUEL SALAZAR, MANUEL
ZALASAR, MANUEL CRUZ ZEPEDA,
MANUEL JOSE CRUZ and BOBO,

Defendant - Appellant.

No. 05-50919

D.C. No. CR-04-01226-RSWL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted July 14, 2008^{**}
Pasadena, California

Before: SILVERMAN, RAWLINSON, and M. SMITH, Circuit Judges.

Manuel Salazar-Cruz appeals from the district court's imposition of a 57-month sentence. Salazar-Cruz pled guilty to violating 8 U.S.C. § 1326 for being an

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

illegal alien found in the United States following deportation. We have jurisdiction pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291.

Salazar-Cruz argues that the district court plainly erred when it increased his Offense Level by sixteen points for a “crime of violence” on account of his California voluntary manslaughter conviction. This argument fails because that offense is indeed “a ‘crime of violence’ for purposes of U.S.S.G. § 2L1.2.” *United States v. Bonilla-Montenegro*, 331 F.3d 1047, 1052 (9th Cir. 2003). Furthermore, the Sentencing Guidelines state that “[p]rior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.” U.S. Sentencing Guidelines Manual § 2L1.2 cmt. n.5 (2005).

Salazar-Cruz also asserts that the district court erroneously applied the guideline range as “a presumptive sentence” and did not adequately review the 18 U.S.C. § 3553(a) factors or detail its sentencing decision. We disagree. The district court in this case discussed Salazar-Cruz’s request for a downward departure, noted that the Guidelines were “advisory,” stated it “believe[d]” the guideline range to be “reasonable” under § 3553, and imposed a sentence at the low-end of that range. Further, as in *United States v. Carty*, 520 F.3d 984, 996 (9th Cir. 2008) (en banc), *cert. denied*, *Zavala v. United States*, 128 S. Ct. 2491 (2008),

the court mentioned that it had “considered” the sentencing memoranda of the parties, which included Salazar-Cruz’s § 3553(a) arguments. There was no error committed by the district court in these respects. *See United States v. Rivera*, 527 F.3d 891, 911 (9th Cir. 2008); *Carty*, 520 F.3d at 996.

Salazar-Cruz correctly acknowledges that his argument that § 1326(b) is unconstitutional is foreclosed by Ninth Circuit case law. *See, e.g., United States v. Narvaez-Gomez*, 489 F.3d 970, 977-78 (9th Cir. 2007).

AFFIRMED.